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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,647	12/22/2000	Aman Gupta	GEMS8081.055	4528
27061 7590 02/10/2009 ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS) 136 S WISCONSIN ST PORT WASHINGTON, WI 53074				
EXAMINER GORT, ELAINE L				
ART UNIT 3687		PAPER NUMBER		
NOTIFICATION DATE 02/10/2009		DELIVERY MODE ELECTRONIC		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/747,647
Filing Date: December 22, 2000
Appellant(s): GUPTA ET AL.

Kevin R. Rosin
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/12/07 appealing from the Office action mailed 10/11/06 and the Board's Order returning the appeal to the Examiner mailed 1/8/2009 requiring the specific details of the rejections made in the Office Action mailed 10/11/06 instead of just a referral to the action.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5809479	Martin et al.	09-1998
6322502	Schoenberg et al.	11-2001
6032121	Dietrich et al.	2-2000

(9) Grounds of Rejection

The following Rejections were presented in the prior Office Action mailed 10/11/06:

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, the recitation "displaying the proactive promise alerts with the order numbers by product category and type of alert" renders the claim indefinite. Is Applicant referring to the different proactive promise alerts or proactive promise and reactive shipment alert?

Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The system contains data structures (signals) not claimed as embodied in computer-readable media and therefore are descriptive material per se and are not statutory because they are not capable of causing function change in a computer.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,809,479 (Martin) in view of U.S. Patent No. 6,032,121 (Dietrich), and further in view of U.S. Patent No. 6,322,502 (Schoenberg).

Martin discloses a method for reporting status of work in progress comprising the steps of: periodically querying a database (14; see Figure 1; see also column 2, lines 48-49) that contains data indicating an order number (inherent), a promise date (see column 3, lines 57-61), a request date (see column 3, lines 27-55, "customer-preferred ship date"), and a shipment date (see column 4, line 2, "customer-expected delivery date"); comparing the promise dates and the request dates (see column 3, line 56 - column 4, line 23). Regarding claim 8, it is noted that Martin notifies a customer when there is a discrepancy between the promise date and the request date (see column 4, lines 3-4).

Martin fails to disclose setting a proactive promise alert if a promise date is later than a request date for a given order and displaying the proactive alerts with the order numbers. If there is a discrepancy between the promise date and request date, Martin merely recognizes the discrepancy and reschedules (see column 3, line 56 - column 4, line 23).

Dietrich teaches the use of method of "proactive" planning (as required by claim 1) in real-time (as required by claim 5) to provide advance warnings (see column 2, lines 58-61; see also column 6, lines 25 - column 7, line 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin with the proactive warning (alert) taught by Dietrich, because an early warning system reduces the chance that undesired events will occur.

The combination of Martin and Dietrich disclose all the limitations as set forth above but fail to explicitly disclose data related to product category of products or services, and setting a reactive alert if a shipment date exists and the request date is less than a user-defined number of days prior to a current date. Schoenberg teaches the entry and monitoring of action items, such as, orders for drugs or other treatments. Schoenberg further teaches the use of reactive alerts (see column 5, lines 39-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Martin/Dietrich with reactive alerts as taught by Schoenberg, because the use of reactive alerts are helpful management tools for correcting problems when undesired activities have already occurred.

(10) Response to Argument

Applicant has argued that the 112 Rejection is improper.

Examiner withdraws the 112 rejection.

Applicant has argued that the 101 Rejection is improper.

Applicant has argued that the 101 rejection is improper because they claim that a data signal falls within one of the four enumerated categories because the sequence of instruction cause processors to execute a plurality of acts. Examiner maintains the 101 rejection as these claims are directed to non-statutory subject matter reciting logic per se. If logic is merely computer code, then the method fails to comprise any physical elements and the claims are directed toward a computer program claimed as a computer listing per se, i.e., the descriptions or expressions of the programs, are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. See MPEP 2106 IV.B.1(a)

Applicant has argued that the 103 Rejection is improper.

CLAIM 1

(I) Appellant has argued a Lack of Motivation to Combine References

Appellant has argued that the modification to Martin et al. by adding proactive planning as taught by Dietrich et al. and the use of product categories and reactive alerts taught by Schoenberg et al. provides no benefit and that there is no suggestion or motivation to modify Martin et al. or to combine the reference teachings.

KSR forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. KSR, 127 S.Ct. at 1741m 82 USPQ2d at 1396. The Examiner

contends that the use of "proactive planning" advance warnings as taught by Dietrich et al. provides "proactive promise alerts" when it provides advance warnings to users to carry out "proactive planning". See Dietrich et al. column 2 lines 58+. The Examiner contends that the use of product categories and reactive alerts as taught by Schoenberg et al. provides information by product category and reactive alerts to provide information by category and to provide helpful management tools for correcting problems when undesired activities have occurred. Claims 1-16 recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither Appellants' Specification nor Appellants' arguments present any evidence that modifying Martin et al. with the "proactive promise alerts" of Dietrich when it provides advance warnings to users to carry out "proactive planning" was uniquely challenging or difficult for one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.'s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.'s "proactive promise alerts" to provide advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals). Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the alert method of Martin et al. and modified by Dietrich et al. to include disclosing data by category and setting reactive alerts as taught by Schoenberg (eg column 5, lines 39-48 for reactive alerts) for monitoring action items by category and to help in managing

problems when undesired activities have already occurred (for example that an item has not been delivered and should have been).

(II) Appellant has argued a Lack of Reasonable Expectation of Success

Appellant has argued that there is no reasonable expectation of success in the case. The Examiner contends that there is a reasonable expectation of success in the combination of the references. The art is based in the data processing and alert generation field which is a highly predictable art. The combining of Dietrich's clearly disclosed "proactive" alerts and Schoenberg's distinguishment by product category and "reactive" alerts to Martin et al.'s method of comparing, generating and routing to a human order scheduler (Examiner construes this routing to meet the definition of an "alert") is straightforward and one of ordinary skill in the art at the time of the invention would have been able to combine these references to produce the claimed method.

In response to applicant's argument that the references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all three references are in the same field of art being the art of data processing and alert generation for delivery of goods or services and solve particular

problems relating to providing notices for both forecasted problems with shipping and currently existing problems with shipping, therefore one of ordinary skill in the art would have found there to be a reasonable expectation of success.

(III) Appellant has argued a Lack of References Teaching, Showing, or Disclosing all the elements of the present claims

Appellant has argued that there is no teaching or disclosure of all elements including an alert, multiple proactive alerts and the alerts being displayed with an order number.

The Examiner contends that all elements are present or included in the combination of Martin et al. with Dietrich et al. and Schoenberg et al.

The Examiner provides the following breakdown of elements for clarification:

A method for reporting status of work in progress, comprising the steps of:

Periodically querying (martin et al. queries to disclose problems with shipments as shown in column 3 lines 55+) an electronic database (such as database 15 in figure 1) that contains data indicating (Examiner notes that this term "indicating" is somewhat of a loose term as the Examiner need only find data that "indicates" the following, ie does not have to specifically be the later recited terms. For example data "indicating" an order number may include a buyer's name as the name would refer to, thus indicate, an order number)

an order number (it is widely accepted that orders are given order numbers for tracking of orders),

a promise date (for example: the proposed/estimated delivery date called "customer-expected delivery date" disclosed in column 4 line 2),

a request date (for example the customers requested delivery dates disclosed in column 3 line 56),

a shipment date (the date the shipment was or will actually be shipped, for example see column 4 lines 16 discussing actual ship dates),

a product category for a plurality of products/services offered (Schoenber et al. was used to teach that it is notoriously old and well known in the art of data processing and alert generating for the delivery of goods or services to monitor action items, such as, for example, orders for drugs or other treatments which Examiner construes to be monitoring by categories (for example see Schoenberg et al. column 5, lines 39-48 for generating reactive alerts by items, to track items by specific type, such as for specific drugs or other treatments) to help in monitor orders by requested materials or services (for example discloses the specific item to be delivered or should have been delivered),

comparing the promise dates and the request dates (see column 3 lines 56 to column 4 lines 23 which discusses when the customer's requested delivery date is analyzed to determine if it is possible for the supplier to meet the requested date. If the supplier can not only ship on certain dates but not on the requested date the order is routed to a human order scheduler which Examiner construes to loosely be an alert. If the order can be made in the requested time then it is not sent to the scheduler);

setting a proactive promise alert if a promise date is later than a request date for a given order (Examiner has stated that Martin does not specifically disclose "proactive "

promise alerts and has used Dietrich et al.'s "proactive planning" "advance warnings", disclosed in column 2 lines 58 and 58, to teach that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.'s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.'s "proactive promise alerts" to provide specific advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals);

displaying the proactive promise alerts with the order numbers for those given orders that have a promise date that is later than their respective request date (the schedulers of Martin et al., disclosed in column 3 lines 55-61, are routed a customer order entry which inherently includes the order number. Note also that the routed order has been modified above by Dietrich et al. to include a specific "proactive"/advance warning alert to reduce the chance that undesired event will occur).

CLAIM 9

(I) Appellant has argued a Lack of Motivation to Combine References

Appellant has argued that the modification to Martin et al. by adding proactive planning as taught by Dietrich et al. and the use of product categories and reactive alerts taught by Schoenberg et al. provides no benefit and that there is no suggestion or motivation to modify Martin et al. or to combine the reference teachings.

KSR forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. KSR, 127 S.Ct. at 1741m 82 USPQ2d at 1396. The Examiner contends that the use of "proactive planning" advance warnings as taught by Dietrich et al. provides "proactive promise alerts" when it provides advance warnings to users to carry out "proactive planning". See Dietrich et al. column 2 lines 58+. The Examiner contends that the use of product categories and reactive alerts as taught by Schoenberg et al. provides information by product category and reactive alerts to provide information by category and to provide helpful management tools for correcting problems when undesired activities have occurred. Claims 1-16 recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither Appellants' Specification nor Appellants' arguments present any evidence that modifying Martin et al. with the "proactive promise alerts" of Dietrich when it provides advance warnings to users to carry out "proactive planning" was uniquely challenging or difficult for one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.'s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.'s "proactive promise alerts" to provide advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals). Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the alert method of Martin et al. and modified by Dietrich et al. to include disclosing data

by category and setting reactive alerts as taught by Schoenberg (eg column 5, lines 39-48 for reactive alerts) for monitoring action items by category and to help in managing problems when undesired activities have already occurred (for example that an item has not been delivered and should have been).

(II) Appellant has argued a Lack of Reasonable Expectation of Success

Appellant has argued that there is no reasonable expectation of success in the case. The Examiner contends that there is a reasonable expectation of success in the combination of the references. The art is based in the data processing and alert generation field which is a highly predictable art. The combining of Dietrich's clearly disclosed "proactive" alerts and Schoenberg's distinguishment by product category and "reactive" alerts to Martin et al.'s method of comparing, generating and routing to a human order scheduler (Examiner construes this routing to meet the definition of an "alert") is straightforward and one of ordinary skill in the art at the time of the invention would have been able to combine these references to produce the claimed method.

In response to applicant's argument that the references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.

1992). In this case, all three references are in the same field of art being the art of data processing and alert generation for delivery of goods or services and solve particular problems relating to providing notices for both forecasted problems with shipping and currently existing problems with shipping, therefore one of ordinary skill in the art would have found there to be a reasonable expectation of success.

(III) Appellant has argued a Lack of References Teaching, Showing, or Disclosing all the elements of the present claims

Appellant has argued that there is no teaching or disclosure of all elements including an alert, multiple proactive alerts and the alerts being displayed with an order number.

The Examiner contends that all elements are present or included in the combination of Martin et al. with Dietrich et al. and Schoenberg et al.

The Examiner provides the following breakdown of elements for clarification:

A computer readable medium having stored thereon one or more computer programs that, when executed by one or more computers, causes the one or more computers to:

Populate a database (such as database 15 in figure 1) with data to include an order number (it is widely accepted that orders are given order numbers for tracking of orders),

a promise date (for example: the proposed/estimated delivery date called "customer-expected delivery date" disclosed in column 4 line 2),

a request date (for example the customers requested delivery dates disclosed in column 3 line 56),

a shipment date (the date the shipment was or will actually be shipped, for example see column 4 lines 16 discussing actual ship dates),

a product category for a plurality of products/services offered (Schoenber et al. was used to teach that it is notoriously old and well known in the art of data processing and alert generating for the delivery of goods or services to monitor action items, such as, for example, orders for drugs or other treatments which Examiner construes to be monitoring by categories (for example see Schoenberg et al. column 5, lines 39-48 for generating reactive alerts by items, to track items by specific type, such as for specific drugs or other treatments) to help in monitor orders by requested materials or services (for example discloses the specific item to be delivered or should have been delivered),

Periodically query the data base and compare promise dates to request dates (martin et al. queries to disclose problems with shipments as shown in column 3 lines 55+. See also column 3 lines 56 to column 4 lines 23 which discusses when the customer's requested delivery date is analyzed to determine if it is possible for the supplier to meet the requested date which inherently must be compared to viable shipping dates established by the seller. If the supplier can ship on certain dates but not on the requested date the order is routed to a human order scheduler which Examiner construes to loosely be an alert. If the order can be made in the requested time then it is not sent to the scheduler);

set a proactive alert if the promise date is later than a request date (Examiner has stated that Martin does not specifically disclose “proactive “ promise alerts and has used Dietrich et al.’s “proactive planning” “advance warnings”, disclosed in column 2 lines 58 and 58, to teach that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.’s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.’s “proactive promise alerts” to provide specific advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals);

set a reactive alert if the shipment date exist and the request date is less then a user-defined number of days prior to a current date (Examiner has used Schoenberg to teach that it is old and well known in the art to use reactive alerts when orders have not been delivered when they are scheduled to be delivered. See Schoenberg column 5 lines 39-48); and

display any proactive and reactive shipment alerts by product category and type of alert. (The schedulers of Martin et al., disclosed in column 3 lines 55-61, are routed a customer order entry which has been modified above to include both proactive and reactive alerts categorized by category as taught by Dietrich et al. and Schoenberg et al., respectively, to provide alerts warning that an undesired event will or has occurred).

CLAIM 15

(I) Appellant has argued a Lack of Motivation to Combine References

Appellant has argued that the modification to Martin et al. by adding proactive planning as taught by Dietrich et al. and the use of product categories and reactive alerts taught by Schoenberg et al. provides no benefit and that there is no suggestion or motivation to modify Martin et al. or to combine the reference teachings.

As set forth with respect to claim 1, KSR forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. KSR, 127 S.Ct. at 1741m 82 USPQ2d at 1396. The Examiner contends that the use of "proactive planning" advance warnings as taught by Dietrich et al. provides "proactive promise alerts" when it provides advance warnings to users to carry out "proactive planning". See Dietrich et al. column 2 lines 58+. The Examiner contends that the use of product categories and reactive alerts as taught by Schoenberg et al. provides information by product category and reactive alerts to provide information by category and to provide helpful management tools for correcting problems when undesired activities have occurred. Claims 1-16 recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither Appellants' Specification nor Appellants' arguments present any evidence that modifying Martin et al. with the "proactive promise alerts" of Dietrich when it provides advance warnings to users to carry out "proactive planning" was uniquely challenging or difficult for one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.'s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.'s "proactive promise

alerts" to provide advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals). Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the alert method of Martin et al. and modified by Dietrich et al. to include disclosing data by category and setting reactive alerts as taught by Schoenberg (eg column 5, lines 39-48 for reactive alerts) for monitoring action items by category and to help in managing problems when undesired activities have already occurred (for example that an item has not been delivered and should have been).

(II) Appellant has argued a Lack of Reasonable Expectation of Success

Appellant has argued that there is no reasonable expectation of success in the case. The Examiner contends that there is a reasonable expectation of success in the combination of the references. The art is based in the data processing and alert generation field which is a highly predictable art. The combining of Dietrich's clearly disclosed "proactive" alerts and Schoenberg's distinguishment by product category and "reactive" alerts to Martin et al.'s method of comparing, generating and routing to a human order scheduler (Examiner construes this routing to meet the definition of an "alert") is straightforward and one of ordinary skill in the art at the time of the invention would have been able to combine these references to produce the claimed method.

In response to applicant's argument that the references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all three references are in the same field of art being the art of data processing and alert generation for delivery of goods or services and solve particular problems relating to providing notices for both forecasted problems with shipping and currently existing problems with shipping, therefore one of ordinary skill in the art would have found there to be a reasonable expectation of success.

(III) Appellant has argued a Lack of References Teaching, Showing, or Disclosing all the elements of the present claims

Appellant has argued that there is no teaching or disclosure of all elements including an alert, multiple proactive alerts and the alerts being displayed with an order number.

The Examiner contends that all elements are present or included in the combination of Martin et al. with Dietrich et al. and Schoenberg et al.

The Examiner provides the following breakdown of elements for clarification:

A computer data signal representing a sequence of instructions that, when executed by one or more processors, cause the one or more processors to:

Populate a database (such as database 15 in figure 1) with

An order date (Examiner contends that it is widely accepted that order dates are stored with orders for tracking of orders),

a request date (for example the customers requested delivery dates disclosed in column 3 line 56),

a shipment date (the date the shipment was or will actually be shipped, for example see column 4 lines 16 discussing actual ship dates),

a product category for a plurality of products/services offered (Schoenber et al. was used to teach that it is notoriously old and well known in the art of data processing and alert generating for the delivery of goods or services to monitor action items by category, such as, for example, orders for drugs or other treatments which Examiner construes to be monitoring by categories (for example see Schoenberg et al. column 5, lines 39-48 for generating reactive alerts by items, to track items by specific type, such as for specific drugs or other treatments) to help in monitor orders by requested materials or services (for example discloses the specific item to be delivered or should have been delivered),

a promise date (for example: the proposed/estimated delivery date called "customer-expected delivery date" disclosed in column 4 line 2),

Query the data base and compare promise dates to request dates for each order and check for the entry of a shipment date for each order (Martin et al. queries to disclose problems with shipments as shown in column 3 lines 55+. See also column 3 lines 56 to column 4 lines 23 which discusses when the customer's requested delivery date is analyzed to determine if it is possible for the supplier to meet the requested date

which inherently must be compared to viable shipping dates established by the seller. If the supplier can ship on certain dates but not on the requested date the order is routed to a human order scheduler which Examiner construes to loosely be an alert. If the order can be made in the requested time then it is not sent to the scheduler);

set a proactive alert if any promise date is later than a request date (Examiner has stated that Martin does not specifically disclose "proactive " promise alerts and has used Dietrich et al.'s "proactive planning" "advance warnings", disclosed in column 2 lines 58 and 58, to teach that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Martin et al.'s alert to a human order scheduler disclosed in column 3 lines 55-61 with Dietrich et al.'s "proactive promise alerts" to provide specific advance warnings to reduce the chance that undesired events will occur (such as the shipment being late without notice to individuals);

set a reactive alert if a shipment date exist for an order and the request date is less then a user-defined number of days prior to a current date (Examiner has used Schoenberg to teach that it is old and well known in the art to use reactive alerts when orders have not been delivered when they are scheduled to be delivered. See Schoenberg column 5 lines 39-48); and

display all proactive and reactive alerts by product/service category and type of alert (The schedulers of Martin et al., disclosed in column 3 lines 55-61, are routed a customer order entry which has been modified above to include both proactive and reactive alerts by category as taught by Dietrich et al. and Schoenberg et al.,

respectively, to provide alerts warning what specific undesired event will or has occurred).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Elaine Gort/

Primary Examiner, Art Unit 3687

Elaine Gort

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /vm/

Appeals Conference Specialist

Vincent Millin

